

~~Administrative - Internal Use Only~~

Approved For Release 2005/07/01 : CIA-RDP80B01495R000400040029-6

17 MAR 1975

MEMORANDUM FOR: Deputy Director for Administration
Deputy Director for Intelligence
Deputy Director for Operations
Deputy Director for Science & Technology

FROM : Director, Equal Employment Opportunity

SUBJECT : EEO Complaint Processing

1. In the course of an on-going EEO complaint investigation, several senior managers were not aware of their responsibilities for participating in the investigation or seeking an informal settlement before the complaint went formal. Because of the costs in time and money involved in processing formal EEO complaints, it is suggested that each of your senior managers be made aware of their role with the hope that they can help reduce the number of complaints or get them settled at an early stage.

2. Public Law 92-261, the Equal Employment Opportunity Act of 1972, brought Federal agencies and employees under the Civil Rights Act of 1964. The Law gives the Civil Service Commission the authority to enforce its provisions. The Commission has issued explicit instructions on how EEO complaints must be handled starting with precomplaint processing through filing law suits. The key steps and responsibilities of Agency managers are these:

a. Precomplaint processing - An employee who believes that he or she has been discriminated against because of race, color, religion, sex, national origin, or age (40 through 64), must seek the aid of an EEO counselor within 30 days of the alleged discrimination. We have 25 EEO counselors (not career counselors) in the Agency. The counselor tries to get an informal settlement within 21 days. To do so the Civil Service Commission states first that "the Agency shall assure that full cooperation is provided by all employees to the counselor..." and "the EEO counselor shall be free from restraint, interference, coercion, discrimination, or reprisal in connection with the performance of his duties..." In most cases where the counselor has had our managers' cooperation, an informal settlement has been made (nine times out of ten is the government's and our record). The solution is generally a compromise.

This is the stage, where we have spared ourselves and the employee of a lot of grief when we have managed a settlement. In each case it required the attention and action of an office senior official.

b. Formal complaint processing - If the EEO counselor, the manager, and the complainant cannot reach a settlement within 21 days, the complainant has 15 days to file a formal EEO complaint -- generally to the directorate EEO officer or me. If the complaint is accepted (i.e. time limits were met, it is an alleged discrimination, not a grievance, etc.), I appoint within five days, an Agency investigator who must not be a member of the complainant's directorate. The Commission regulation states that "the agency shall authorize the investigator to administer oaths and require statements of witnesses be under oath or affirmation, without a pledge of confidence." The Commission states further that "the Director, EEO... shall furnish to the person conducting the investigation a written authorization (1) to investigate all aspects of complaints of discrimination, (2) to require all employees of the agency to cooperate with him in the conduct of the investigation, and (3) to require employees of the agency having any knowledge of the matter complained of to furnish testimony under oath or affirmation without a pledge of confidence." We must complete our agency investigation in 75 days or the Commission can take it over. This is a costly process. Managers can, at any time in the investigation, attempt a settlement with the complainant and/or his or her representative (who has been a lawyer in three of the Agency cases). As indicated, the manager's cooperation is again required whether we can settle the complaint or not. When the investigation is completed the complainant and I review the file, and I (or the DCI) try, with the manager, to reach a settlement. To date all formal complaints have been resolved after reaching this stage, the majority by compromises fair to both the employee and the Agency.

c. The EEO hearing - If a settlement is not reached and the complainant disagrees with our Agency decision, he or she can ask for a hearing -- again within 15 days from the day we make our decision. The Commission sends in an outside complaint examiner unless the case has security complications. Here we can supply the examiner. The examiner runs the hearing by (1) administering oaths or affirmation; (2) regulating the course of the hearing; (3) ruling on offers of proof; (4) limiting the number of witnesses; (5) dismissing any person who disrupts or

Administrative - Internal Use Only

Approved For Release 2005/07/01 : CIA-RDP80B01495R000400040029-6

obstructs the hearing; and (6) requesting the agency to make witnesses available when he determines that the testimony is necessary. Witnesses are required to appear unless it is administratively impractical -- in which case the agency must provide an explanation which the examiner can reject; or he can ask for a written statement by the witness. He can also require additional investigation on our part if he finds this necessary. The examiner then offers his recommendation to the DCI or his designee (a Deputy Director). If the DCI does not act on the recommendation within 180 days after the complaint was filed, the examiner's recommendation is binding on the Agency. To date, all of our investigations have run beyond our own 75 day limit with most approaching the 180 day limit. We lucked out because no hearings have been required. The need for managers to move on EEO complaint actions is very important so that we can have some control over the decision. In addition to the requirement that we accept the examiner's recommendations if we do not act within 180 days the Law states that the complainant can file a civil suit if action has not been completed on his complaint after 180 days -- or if he does not like the decision reached by either the examiner or the Agency. It should be noted that the DCI is the defendant in case of a suit. The court's decision is binding on the Agency.

d. Appeal to the Civil Service Commission - As an alternative to filing a civil suit, a complainant can appeal an Agency decision to the Civil Service Board of Appeals and Review (BAR) within 15 days after receiving the Agency's decision. The BAR reviews the investigation and the hearing results. It can remand a complaint to the Agency for further investigation or a rehearing. Its ruling on the case is final and binding on the Agency. As in the court procedure, the decision-making leaves our hands. It should also be noted that reprisal against the complainant because of the complaint is grounds for a new complaint.

3. This is obviously a costly and time consuming process. The Law gives us the choice of getting a complaint settled ourselves within 75 days (180 at the maximum including hearing time) or letting an outside element make the decision -- the courts or the BAR. The first obvious approach is to manage without discrimination. Once faced with a complaint, the next step is to get it settled among ourselves with the managers playing the key role. If you have any questions, the EEO Officers and I, with help from the General Counsel, should be able to answer them.

[Redacted Signature]

Thomas W. Holmes, Jr.

Director

Equal Employment Opportunity

STAT

cc:

General Counsel

Inspector General

Comptroller

EEO Officers

Approved For Release 2005/07/01 : CIA-RDP80B01495R000400040029-6

Administrative - Internal Use Only